

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 19670
[REDACTED],)	
)	DECISION
Petitioners.)	
_____)	

On July 14, 2006, the staff of the Tax Discovery Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayers) proposing income tax, penalty, and interest for the taxable years 2002 through 2004 in the total amount of \$161,688.

On September 8, 2006, Mr. [Redacted] filed a timely appeal, and on September 14, 2006, Ms. [Redacted] filed a timely appeal and petition for redetermination. Neither of the taxpayers requested a hearing, but both chose to provide additional information for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The Tax Discovery Bureau (Bureau) received an anonymous referral that the taxpayers had a “vacation home” in Idaho that was actually their primary residence for over two years. The referral stated that Mr. [Redacted] worked in [Redacted], Washington, and their vehicles had Washington plates; however, Ms. [Redacted] had an Idaho driver’s license, and their two sons attended school in [Redacted], Idaho. The Bureau searched through the Tax Commission’s records and found that the taxpayers had not filed any income tax returns with the state of Idaho. The Bureau sent the taxpayers a letter asking about their requirement to file Idaho individual income tax returns. Mr. [Redacted] responded that they were not required to file Idaho income tax returns. He stated that he was not a resident of Idaho; he was a resident of Texas and more recently of Washington. He stated the house in Idaho was vacation property where he planned to retire.

The Bureau did not know at the time the initial letter was sent that the taxpayers were divorced. The Bureau located Ms. [Redacted] and sent both Ms. [Redacted] and Mr. [Redacted] a questionnaire for further clarification of their status during the years in question. The taxpayers returned their questionnaires and the Bureau found that there was little in agreement between the taxpayers. The Bureau pursued the matter further and obtained additional information from other sources. Considering all the information obtained, the Bureau determined the taxpayers were residents/domiciled in Idaho during the years 2002 through 2004. The Bureau prepared Idaho individual income tax returns for the taxpayers based upon [Redacted] and sent them a Notice of Deficiency Determination.

Both Mr. [Redacted] and Ms. [Redacted] protested the Bureau's determination; however, their protests were not for the same reasons. Ms. [Redacted] agreed with the Bureau's findings that Idaho income tax returns needed to be filed; however, she disagreed with the computation of the amount of taxable income. Ms. [Redacted] stated that for 2002 and 2003 they should be allowed the itemized deductions reported on their federal income tax returns for those years. As for Mr. [Redacted] totally disagreed with the Bureau's determination that he was required to file Idaho income tax returns. He stated he was not a full time resident of Idaho during those years and therefore not subject to Idaho tax. He also disputed the adjusted gross income figures determined by the Bureau.

The Bureau referred the matter for administrative review. The Tax Commission sent each of the taxpayers a letter discussing the methods available for redetermining a protested Notice of Deficiency Determination. Neither taxpayer specifically requested a hearing but rather chose to provide any additional information the Tax Commission needed. Since Ms. [Redacted] did not disagree with the Bureau's finding that she was a resident of Idaho, the balance of this

decision will address Mr. [Redacted]'s argument that he was not an Idaho resident and not required to file Idaho income tax returns.

Mr. [Redacted] stated that during the years in question he lived at either [Redacted], Texas, or at [Redacted], Washington. Specifically, Mr. [Redacted] stated the [Redacted], Texas, address was used from March 1997 to February 2001. He stated that in 2001 he stayed in a corporate apartment in [Redacted] while his lake home in Idaho was being built. He stated he had no principal Idaho address and, if he was in Idaho, it was for business and he stayed in a hotel. He stated he was employed with [Redacted] in [Redacted] and he was not present in Idaho for work purposes. He stated he had no children in school, he voted in Washington, he had a Washington driver's license, his vehicles were registered in either Texas or Washington, and he received unemployment benefits from Washington. Mr. [Redacted] also provided statements from his father and his children to attest that he did not live in Idaho.

Idaho Code section 63-3002 states the purpose and intent of the Income Tax Act—to impose a tax on the residents of this state measured by their income from sources wherever derived and on nonresidents on income from Idaho sources. Idaho Code section 63-3013 defines a resident as an individual who is domiciled in Idaho or who maintains a place of abode in this state for the entire taxable year and spends in the aggregate more than 270 days of the taxable year in this state.

Domicile is defined in the Tax Commission's Administrative Rules as "the place where an individual has his true, fixed, permanent home and principal establishment, and to which place he has the intention of returning whenever he is absent. An individual can have several residences or dwelling places, but he legally can have but one domicile at a time." Income Tax Administrative Rule 030.02 (IDAPA 35.01.01.030.2 (2006)). The essential distinction between

residence and domicile is that domicile requires intent to remain at one place for an indeterminate or indefinite period. Reubelmann v. Reubelmann 38 Idaho 159, 164, 220 P 404, 405 (1923). Domicile, once established, persists until a new domicile is legally acquired. In re Cooke's Estate, 96 Idaho 48, 524 P.2d 176 (1973).

In determining where an individual is domiciled, the fact-finder must look at all the surrounding facts and circumstances. No one fact or circumstance is, by itself, determinative. Rather, the decision-maker must analyze all the relevant facts and determine whether, taken as a whole, those facts point in favor of some particular place as the person's domicile. It takes no particular period of time to acquire a new domicile, the result being achieved when the person is physically present in the new place with a state of mind regarding the new place as home. Moreover, mere length of time cannot convert physical presence or residence into domicile. Taylor v. Milan, 89 F.Supp. 880 (1950). Domicile is not necessarily lost by protracted absence from home where the intention to return remains. Wilson v. Pickens, 444 F. Supp. 53 (W.D. Okl. 1977). Generally speaking, in domicile cases an individual's actions are accorded more weight than his declarations since declarations can tend to be deceptive and self-serving. Allan v. Greyhound Lines, 583 P.2d 613, 614 (Utah 1978).

In January 1999, Mr. [Redacted] and Ms. [Redacted] were married. In June 2000, Mr. [Redacted] purchased a residential building lot in [Redacted], Idaho. On the warranty deed Mr. [Redacted]'s address was given as [Redacted], Texas. On March 1, 2001, the taxpayers executed a deed of trust on which their address was given as [Redacted], Idaho. Ms. [Redacted] stated she became an Idaho resident in 2000 and listed her address as [Redacted]. Ms. [Redacted] stated she lived at the [Redacted] address for approximately seven months and then moved to [Redacted], ID. She remained at the [Redacted]. address for about six months until the family

moved into the house they built on the lot in [Redacted]. Ms. [Redacted] stated she lived at [Redacted] from September 2001 to July 2004. It was sometime in 2004 that the taxpayers separated and were divorced in 2005.

Other documents showing the taxpayers' addresses in Idaho include loan applications, settlement statements, bank accounts, a vehicle purchase order, recreational vehicle titles and registrations, and the [Redacted] Country Club membership directory. On the loan application for the house at [Redacted], Mr. [Redacted] stated the construction was for his primary residence and that his present address was the [Redacted] address where he lived for one year. This document is dated January 31, 2001. On a settlement statement for refinancing the [Redacted] house, the borrower's (taxpayers') address is given as the [Redacted] address. The settlement statement is dated September 28, 2001. On a [Redacted] Account Change of Address Notice dated September 28, 2004, the taxpayers changed their address from the [Redacted] address to [Redacted], ID. The [Redacted] address was also used for an account with [Redacted]. On June 7, 2003, Mr. [Redacted] purchased a vehicle. On the purchase agreement, Mr. [Redacted] gave his address as the [Redacted] address. On the Idaho titles and registrations of a boat, two personal watercrafts, and three trailers, the taxpayers listed the [Redacted] address as their address. And in the [Redacted] Country Club membership directory, the taxpayers' address is listed as [Redacted] Road beginning in 2002.

Other indications that the taxpayers were residing in Idaho were automobile registrations, Idaho addresses on their checking account, auto insurance purchased in Idaho, the rental of storage units in Idaho, subscriptions to the [Redacted] newspaper, political contributions to a [Redacted] city official, and Ms. [Redacted]'s children attending Idaho schools. Ms. [Redacted] stated they rented or owned homes in Idaho from August 2000 through June 2005. She stated

she became a resident of Idaho in August 2000, and she obtained an Idaho driver's license and registered to vote in Idaho. There is no evidence that Mr. [Redacted] lived anywhere other than with Ms. [Redacted] in Idaho.

Mr. [Redacted] stated that from March 1997 to February 2001 his address was [Redacted], Texas. He gave no addresses for the period February 2001 through December 2004. He stated in 2001 he was building his lake home in Idaho and lived in a corporate apartment in [Redacted]. For 2002, Mr. [Redacted] stated he was not living in Idaho for five months; he was in [Redacted] and [Redacted] working on a business merger. For 2003, Mr. [Redacted] stated he was not living in Idaho for six months; he was in California helping his father and leading another merger. For 2004, Mr. [Redacted] stated he was not living in Idaho past May. He stated he was in [Redacted] in June and July, and then in California from August through December. Mr. [Redacted] provided statements from his father and his children as evidence of where he resided. Those statements, although somewhat self serving, did validate that Mr. [Redacted] did live in Idaho during 2003 and part of 2004, and that he did spend a portion of those years outside of Idaho on business. Another statement Mr. [Redacted] provided was an agreement letter from his employer calling for Mr. [Redacted] to be in California to complete a merger before October 2003. Other information Mr. [Redacted] provided were copies of his Texas and Washington driver's licenses and statements that he voted in Washington, registered and licensed his vehicle in Washington, banked in Washington, worked in Washington, and received Washington unemployment benefits.

In this case, we have spouses with conflicting positions. The husband stated that he was never a resident of Idaho and his only connection was a vacation home he built in [Redacted]. The wife, on the other hand, stated she became an Idaho resident as early as August 2000 and

lived in Idaho from August 2000 through June 2005. It is not impossible that spouses have different domiciles; however, the Tax Commission does not find that to be the case here. Even though Mr. [Redacted] is adamant that he did not live in Idaho, the evidence available does not support that position. To begin with Mr. [Redacted] stated in one of his letters that there were months in 2002, 2003, and 2004 that he did not live in Idaho. Conversely, there must have been months in each of those years that Mr. [Redacted] lived in Idaho. Ms. [Redacted] also provided information that indicated Mr. [Redacted] was present in Idaho for meals and to watch over the family. Mr. [Redacted] had recreational ties with Idaho as evidenced by his membership in the [Redacted] Country Club and the recreational vehicles titled and registered in Idaho.

Further evidence that Mr. [Redacted] resided and was domiciled in Idaho is the fact that upon the sale of the [Redacted] Road house in 2004 no gain was reported on the taxpayers' 2004 federal income tax return. Mr. [Redacted] provided information on the sale of the house and based on that information the Tax Commission calculated the taxpayers had a minimum gain of \$153,000, but quite possibly it was several hundreds of thousands of dollars more. Nevertheless, no gain was reported on the taxpayers' federal income tax return, so the assumption is that the sale was treated as the sale of a principal residence and the gain excluded under Internal Revenue Code (IRC) section 121. To qualify for the exclusion of IRC section 121, the property had to have been owned and used as a principal residence by the taxpayer for periods aggregating two years or more. Therefore, if the [Redacted] Road house was a principal residence of Mr. [Redacted], he had to be a resident and quite possibly domiciled in Idaho.

Even though Mr. [Redacted] had a Washington driver's license and claimed to have registered a vehicle and voted in Washington, there is little else that shows a connection or tie to Washington. Mr. [Redacted] did use a Post Office box in [Redacted], Washington, a border

town just across the Idaho state line. However, on documents that required a physical address, an Idaho address was used.

The information Mr. [Redacted] provided did not convince the Tax Commission that he did not live in Idaho for the years in question. The Tax Commission believes Mr. [Redacted] lived in Idaho with his family as early as August 2000. His employment may have required him to be absent from time to time but he always returned to Idaho until his separation with Ms. [Redacted] in 2004. Therefore, the Tax Commission finds that the taxpayers were required to file Idaho individual income tax returns for the tax years 2002 through 2004. However, for tax year 2004, Mr. [Redacted]'s filing status is a part-year resident through September. The Tax Commission also modifies the Notice of Deficiency Determination to include the itemized deductions claimed on the taxpayers' 2002 and 2003 federal income tax returns.

The Bureau added interest and penalty to the taxpayers' tax deficiency. The Tax Commission reviewed those additions and found them appropriate and in accordance with Idaho Code sections 63-3045 and 63-3046.

WHEREFORE, the Notice of Deficiency Determination dated July 14, 2006, is hereby MODIFIED, in accordance with the provisions of this decision and, as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayers pay the following tax,
penalty and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2002	\$22,561	\$ 5,640	\$ 6,513	\$ 34,714
2003	20,841	5,210	4,910	30,961
2004	65,005	16,251	11,415	<u>92,671</u>
			TOTAL DUE	<u>\$158,346</u>

Interest is computed to January 15, 2008.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of taxpayers' right to appeal this decision is enclosed.

DATED this ____ day of _____, 2007.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this ____ day of _____, 2007,
served a copy of the within and foregoing DECISION by sending the same by United States
mail, postage prepaid, in an envelope addressed to:

[Redacted]

[Redacted]

[Redacted]

Receipt No.

Receipt No.